

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-09-SE-114
)	
Samsung Telecommunications America, LLC)	Acct. No. 201032100022
and)	
Samsung Electronics Co., Ltd.)	FRN 0005876644
)	

ORDER

Adopted: March 12, 2010

Released: March 12, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”), and Samsung Telecommunications America, LLC (“STA”) and Samsung Electronics Corporation, Ltd. (“SEC”) (together “Samsung”). The Consent Decree terminates an investigation by the Bureau against Samsung for possible violations of the 911 call processing method rules as set forth in Section 22.921 of the Commission’s Rules.¹
2. The Bureau and Samsung have negotiated the terms of the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.
3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.
4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Samsung possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.
5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.
6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. § 22.921.

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Joseph (Joon Kyo) Cheong, Vice President and Chief Financial Officer, Samsung Telecommunications America, LLC, 1301 East Lookout Drive, Richardson, TX 75082 and to Samsung's counsel, David H. Solomon, Esq., Wilkinson Barker Knauer LLP, 2300 N St. NW, Suite 700, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission, Samsung Telecommunications America, LLC (“STA”), and Samsung Electronics Corporation, Ltd. (“SEC”) (together “Samsung”), by their authorized representatives, hereby enter into a Consent Decree for the purpose of terminating the Bureau’s investigation into whether Samsung violated the 911 call processing method rules as set forth in Section 22.921 of the Commission’s Rules.¹

I. DEFINITIONS

1. For purposes of this Consent Decree the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 7.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s July 27, 2009 Letter of Inquiry² (“LOI”) regarding whether Samsung violated the 911

¹ 47 C.F.R. § 22.921.

² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Michelangelo Troisi, Senior Counsel and Director of Risk Management, Samsung Electronics America Inc. (July 27, 2009) (“LOI”). We note that Samsung Electronics America Inc. is not a party to this Consent Decree, as it neither manufactures, imports, nor distributes wireless handsets subject to section 22.921 of the Commission’s Rules.

call processing method rules as set forth in Section 22.921 of the Commission's Rules.³

- (h) "Parties" means Samsung and the Bureau.
- (i) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (j) "Samsung" means Samsung Telecommunications America, LLC and Samsung Electronics Co., Ltd.

II. BACKGROUND

2. Under Section 22.921 of the Commission's Rules, mobile phones manufactured after February 13, 2000, and capable of operating in an analog mode, are required to use one or more of the 911 call system selection processes endorsed or approved by the Commission.⁴ Samsung reported that on April 7, 2009, it voluntarily disclosed to the U.S. Consumer Product Safety Commission ("CPSC") that a limited number of Samsung-manufactured cell phones (with model numbers SPH-A110 and SPH-A120, manufactured between March of 2008 and February of 2009), may be unable to connect with an appropriate public safety answering point ("PSAP"), such as a 911 call center. This inability to connect could occur in markets where a wireless network of carriers is not included in the Preferred Roaming List ("PRL") programmed into the device software which allows calls to be made outside the caller's home area. Samsung proposed a Corrective Action Plan ("CAP") to the CPSC, which includes a free software upgrade to distributors with noncompliant phones in their inventory, and outreach to potential affected consumers. The CPSC has approved and Samsung has implemented the CAP. On July 27, 2009, the Bureau issued a Letter of Inquiry ("LOI") initiating an Investigation regarding these cell phones and whether Samsung violated the Commission's 911 call processing and related Part 2 equipment authorization rules.⁵ On August 26, 2009, Samsung, by counsel, submitted a response to the LOI.⁶

III. TERMS OF AGREEMENT

3. **Adopting Order.** The Parties agree that the provisions of the Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

4. **Jurisdiction.** Samsung agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

5. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation

³ 47 C.F.R. § 22.921.

⁴ *Id.*; *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Report and Order, 14 FCC Rcd 10954 (1999).

⁵ See LOI.

⁶ See Letter from David H. Solomon, Esq. and Robert G. Morse, Esq., Wilkinson Barker Knauer, LLP, to Linda M. Nagel, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 26, 2009) ("LOI Response").

of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

6. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Samsung agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take any action on its own motion, or refer to the Commission any action, against Samsung concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion, or refer to the Commission, any proceeding, formal or informal, or take any action on its own motion, or refer to the Commission any action, against Samsung with respect to Samsung's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

7. **Compliance Plan.** For purposes of settling the matters set forth herein, Samsung agrees to maintain a Compliance Plan ("Compliance Plan") related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Official.** Within 30 days of the Effective Date, SEC shall appoint a Compliance Official ("Compliance Official") who will be responsible for implementing and administering the Compliance Plan.
- (b) **Maintenance of Free Software Upgrade.** Samsung will maintain the free software upgrade program entered into with the CPSC for one year from the Effective Date.
- (c) **Training.** SEC will provide appropriate training and materials concerning the requirements of Section 22.921 and the Consent Decree to those employees, agents and contractors, as appropriate, who are most directly involved in the programming and flashing of handsets with software that affects the routing and completion of 911 calls. Such training will be completed within ninety (90) days of the Effective Date, and any such new employees, agents and contractors, as described above, will receive training within sixty (60) days of their assumption of relevant responsibilities.
- (d) **Compliance Report.** Samsung will file reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and twenty four months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Samsung, stating that the officer has personal knowledge that Samsung has established operating procedures intended to ensure compliance with this Consent Decree. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554. All compliance reports shall also be submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and Kathryn Berthot at Kathy.Berthot@fcc.gov. Samsung may request, in accordance with 47 C.F.R. § 0.459, that such information be treated as confidential business information and withheld from public inspection. Any information submitted with such a request shall be subject to all the protections

afforded by the Commission's rules.⁷ For instance, as set forth in 47 C.F.R. § 0.459(d), such information will be accorded confidential treatment as provided for in sections 0.459(g) and 0.461, until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted.

- (e) **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire twenty four months after the Effective Date.

8. **Voluntary Contribution.** Samsung agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixty thousand dollars (\$60,000). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Samsung will also send electronic notification to Linda Nagel at Linda.Nagel@fcc.gov and Kathryn Berthot at Kathy.Berthot@fcc.gov on the date said payment is made.

9. **Waivers.** Samsung waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification or deletion. Samsung shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Samsung nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Samsung shall waive any statutory right to a trial *de novo*. Samsung hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

10. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

11. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Samsung does not expressly consent) that provision will be superseded by such Commission rule or Order.

12. **Successors and Assigns.** Samsung agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

13. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and

⁷ See 47 C.F.R. § 0.459.

Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Samsung does not admit or deny noncompliance, violation or liability for violating the Act or Rules in connection with the matters that are the subject of this Consent Decree.

14. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

15. **Paragraph Headings.** The headings of the Paragraphs in the Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

16. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

17. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Joseph (Joon Kyo) Cheong
Vice President and Chief Financial Officer
Samsung Telecommunications America, LLC

Date